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George E. Charlton v. George L. Hackett : Brief of Respondent

Utah Supreme Court

Rawlings, Wallace, Roberts & Black; Richard C. Dibblee; Counsel for Respondent;

Case No. 9243

IN THE SUPREME COURT
of the
STATE OF UTAH

GEORGE E. CHARLTON,
Plaintiff and Respondent,

—vs.—

GEORGE L. HACKETT,
Defendant and Appellant.

BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

The parties will be referred to as they appeared in the lower court.

The numbers appearing in parentheses refers to the record.

STATEMENT OF FACTS

The statement of facts contained in appellant's brief is incomplete. Additional facts, as hereinafter related, we believe, have a bearing on the case.

The plaintiff is a resident of Ogden, Utah, and a railroad employee by occupation (R. 20). The defendant is a resident of Salt Lake City, Utah, and an insurance and stock broker by occupation (R. 33).

On the 15th day of February, 1956, plaintiff and an unidentified third person were discussing certain business matters in the office of a local attorney. At the conclusion of this conference, plaintiff was taken by said third person to the office of defendant located on the 7th floor of the Continental Bank Building, Salt Lake City, Utah. The purpose of the meeting was to discuss the proposed sale by plaintiff of his 1948 Willys Jeep Automobile and a 1951 Korsair 23-foot trailer house (R. 21).

After the usual introductions, defendant advised plaintiff *he* was interested in purchasing the equipment (R. 21). The parties discussed the sale, and defendant advised plaintiff if he would sell the equipment to him, defendant would transfer to plaintiff 68,333 shares of J-A Uranium Company stock. Defendant stated if plaintiff would enter into such an agreement, within sixty days plaintiff would receive more for his equipment than if he sold the same for cash (R. 22, 23). Plaintiff agreed to the transaction, and the written agreement which was introduced in evidence as Exhibit number 1 was executed.

The plaintiff transferred to defendant the possession of the Jeep automobile and the house trailer. The defendant failed and refused to deliver to plaintiff the 68,333 shares of stock of the J-A Uranium Company,

and as a result of such refusal, plaintiff instituted this proceeding.

Plaintiff filed an amended complaint (R. 12, 13) and defendant filed an answer to said amended complaint (R. 6). In the answer and at the pretrial conference, defendant contended he was not acting as an individual in the execution of the agreement, but as an agent of the Ackerson-Hackett Investment Company, a Utah corporation. Defendant further contended that if court entered a judgment in favor of plaintiff and against defendant, the amount of damages to be awarded to plaintiff would be limited to the reasonable market value of the 68,333 shares of J-A Uranium Company stock at the time of the alleged breach of the agreement (R. 17).

Trial was held before the court, without a jury, and the court found as Finding of Fact Number One, (R. 47), that defendant entered into this contract as an individual and not as an agent of the Ackerson-Hackett Investment Company. The court further found as Finding of Fact Number Three, (R. 47), that on the date of this agreement the reasonable market value of the Jeep automobile was in the sum of $550.00 and the value of the house trailer was the sum of $1,500.00. The court further found in said Finding of Fact that for a period of 90 days subsequent to execution of said agreement a share of stock of J-A Uranium Company had a reasonable market value of $0.03 (three cents) per share (R. 48). Based on said Findings of Fact the court entered judgment for plaintiff

and against defendant in the sum of $2,049.99 (R. 50). The entry of this judgment is the subject of this appeal.

STATEMENT OF POINTS

POINT I.

TRIAL COURT DID NOT ERR IN FINDING DEFENDANT WAS A PARTY TO THE AGREEMENT.

POINT II.

TRIAL COURT DID NOT ERR IN AWARDING DAMAGES IN THE AMOUNT OF $2,049.99.

ARGUMENT

POINT I.

TRIAL COURT DID NOT ERR IN FINDING DEFENDANT WAS A PARTY TO THE AGREEMENT.

In this case, the agreement which is the subject of the appeal was signed by both the plaintiff and defendant personally. In view of this fact, and the allegations contained in the answer of defendant and his contentions at the pretrial conference, the issue of whether or not defendant executed this agreement as an agent of a corporation was presented to the trial court for a determination. At the trial, the court resolved this issue against defendant and made a Finding of Fact that on the date defendant executed the agreement he did so in his individual capacity and not as an agent of a corporation.

Plaintiff respectfully submits that, in view of the wording of the agreement and the manner it was signed, the issue of agency was a proper question of fact to be determined by the trial court. See Vol. 2 *Am. Jur.*,

Agency, Sec. 454, p. 359. The court, having resolved this issue in favor of plaintiff and against the defendant, the question now presented to this court is whether there is any evidence which, viewed in a light most favorable to plaintiff, sustains the finding of the trial court. We respectfully submit the record is abundant with such evidence.

Plaintiff testified in great detail concerning the facts and circumstances leading to the ultimate execution of the agreement. The important portions of this testimony reveal that plaintiff's initial visit to defendant's office was after he was advised defendant was interested in purchasing a jeep and a trailer house (R. 21). That when he went to the office, he was not aware of any Ackerson-Hackett Investment Company being interested in such a purchase. That after being introduced to defendant, the defendant immediately confirmed his prior information by indicating he could sure use the jeep and trailer and *he* wanted to purchase them (R. 21). The evidence revealed that during the discussions concerning the sale, defendant advised plaintiff if he would trade the jeep and trailer house for stock in a uranium company, which defendant was then offering to the public and which would be delivered to him within ninety days, plaintiff would secure a greater monetary return than if the sale were for cash (R. 22, 23). That only after this suggestion did plaintiff agree to accept 68,333 shares of J-A Uranium Company in exchange for his jeep and trailer.

Another very important point in the record is the testimony by both plaintiff and defendant that during the negotiations prior to the execution of the agreement, the name Ackerson-Hackett Investment Company was never mentioned, and defendant never advised plaintiff he was dealing with the company (R. 23, 42).

Even after the agreement was executed, plaintiff continued his negotiations with the defendant on a personal and individual basis. Plaintiff testified a few days after the agreement was executed, he discovered the jeep automobile was in need of certain repairs and suggested to defendant it be eliminated from the transaction. Defendant again affirmed his position that *he* needed the jeep and wanted to continue in accordance with the original terms of the agreement (R. 23).

From an analysis of the foregoing testimony, it is obvious there is evidence in the record to support the finding by the court that defendant executed the agreement as an individual and not as an agent of the corporation.

The defendant, under Point I of his brief, makes reference to certain rules enunciated in the Restatement of Law on Agency. While we do not argue with these rules, we submit they are not applicable to this case.

Defendant takes the position that, even in the face of the testimony of plaintiff, plaintiff should have known he was dealing with the disclosed principal in this transaction. In support of his position, he makes reference

to certain portions of the testimony. In these references, however, he fails to note the portions of the record which adequately refute his contentions.

Counsel states that, because the name Ackerson-Hackett was on the door of the office of defendant, this fact put him on notice of the existence of the corporation and placed a duty upon him to make inquiry concerning the corporation. Counsel fails, however, to cite the portion of the record where defendant admitted his name was also on the door in a conspicuous place and separate from the corporation (R. 42). In view of this fact, and having in mind the purpose of plaintiff in going to the office, we submit, plaintiff was under no duty of inquiry concerning Ackerson-Hackett Investment Company. Our position is further substantiated by the fact the defendant, himself, during the entire transaction made no indication that Ackerson-Hackett Investment Company was to be considered as a party to this transaction.

Counsel makes reference to the fact the agreement between the parties was written on Ackerson-Hackett stationery, and the company name was also placed on the stock confirmation. Again, counsel fails to note the portion of the record where plaintiff testified that, after the terms of the transaction were completed, defendant requested his secretary to get him a piece of paper, in order that these terms could be reduced to writing (R. 26). We submit the letterhead contained on this piece of paper was not of such consequence as to place plaintiff on any notice he was dealing with a corporation. The

importance of the piece of paper is limited to its recital concerning the terms of the agreement. It is our position the immateriality of the stationery is substantiated by the fact the corporation designated in the letterhead was not noted as a party to the transaction, and the signature of defendant was not in a corporate capacity.

With respect to the stock confirmation slip, we again refer to the record, where plaintiff testified that the name being on the document was of no importance because his concern was whether he would receive the stock as agreed by defendant (R. 28).

Under Point I of his brief, defendant makes the further statement there is no testimony in the record from which it can be inferred defendant made any promises to plaintiff. We take issue with this statement and contend the testimony describing the conduct of defendant during this entire transaction reveals certain proper inferences.

There is no argument that the agreement in this case was prepared in the office of defendant under his supervision and direction. We submit that from these facts it may be inferred that, if defendant were executing the agreement as an agent of the Ackerson-Hackett Investment Company, this fact could have been made clear and understandable by anyone reading the agreement. If the corporation were to have an interest in this agreement, the defendant could have made it a party to the agreement. If the defendant did desire to make the company a party, he could have signed his name in a corpo-

rate capacity and on behalf of the corporation. The defendant, however, failed to take these simple measures, and we submit the court can infer from these facts he did not intend the company to be a party.

The defendant in this action testified he did not know whether this transaction were included in the minutes of the corporation. Again, we state the failure of defendant to complete the transaction in accordance with proper corporate management; the court can infer the company was never intended to be made a party.

Plaintiff respectfully submits the trial court, after properly weighing the testimony in this case, believed the plaintiff and his testimony. The record justifies and substantiates our position that the corporation was never a party to the agreement. It is our further position that defendant's attempt to incorporate the corporation in this agreement is a rather shoddy effort on his part to obtain the fruits of the agreement without bearing the responsibility of paying the agreed price.

We respectfully submit the evidence in this case substantiates the finding by the trial court, and said ruling should be sustained by this court.

POINT II.

TRIAL COURT DID NOT ERR IN AWARDING DAMAGES IN THE AMOUNT OF $2,049.99.

The defendant in this action admitted he failed to deliver to plaintiff the 68,333 shares of stock of the J-A Uranium Company. In assessing the damages for the

breach of the contract by defendant, the trial court found that on the date of the agreement and for a period of ninety days thereafter, the stock of the J-A Uranium Company had a reasonable value of three cents per share (R. 48). The trial court, having so ruled, the issue now presented to this court is whether the evidence, viewed in a light most favorable to plaintiff, sustains the finding by the court.

Plaintiff testified on direct examination as follows: (R. 24, 25)

> "Q. The contract which we have introduced talks about par value stock. Did Mr. Hackett say anything as to the value of the stock?
>
> A. Yes, sir. He said that it had been sold for three cents but he said the position of the company and everything he was sure I would get a lot more than that out of it; that three cents was the par value of it."

The defendant, on cross examination, testified as follows: (R. 42):

> "Q. Now this public offering, does that mean it was offered to the public for buying?
>
> A. Yes.
>
> Q. And that was being done on February 15, 1956?
>
> A. It was either in the process right then, Mr. Dibblee, or it was about to commence. I can't say exactly, but it was right within that period of time, yes.

Q. But shortly thereafter, 68,333 shares of J-A Uranium stock, it was possible to purchase those shares?

A. Yes.

Q. And if you purchased them you would be paying three cents per share?

A. Right."

We respectfully submit that the foregoing testimony supports the ruling of the court as to the reasonable value of the uranium stock.

Defendant, in his brief, contends the evidence is not sufficient for the court to find value of the stock. In support of his position, he cites to the court certain references enunciating the rule for determining value of stock when there is no evidence of value. In view of the testimony, these authorities are obviously not in point.

There is one portion of the citation which is applicable to this case and is worth repeating. In 18 *Corpus Juris Secundum Corporation* Sec. 415, which states as follows:

> "* * * In order that stock may have a market value, it is not necessary that it be the subject of daily traffic by being bought and sold on the streets or in the frequent dealings of tradespeople; it is enough if it is occasionally the subject of sale or exchange in the community so as to fix upon the stock at different times a customary price."

In applying the foregoing to the case at bar, we submit this stock has experienced sufficient activity for it to have a value. We have not only sales referred to by the parties, but also the sale now under consideration by this court. In the case at bar, the evidence revealed at the time of the execution of this contract the reasonable value of plaintiff's jeep automobile was the sum of $550.00 and of the trailer house the sum of $1,500.00 (R. 24). Defendant, by his own agreement, computed that property having a total value of $2,050.00 was equal to 68,333 shares of stock of the J-A Uranium Company. By the use of simple arithmetic, it is shown that the opinion of the defendant supports the finding of the court.

We respectfully submit that the finding by the trial court as to the value of the stock involved in this case is supported by the evidence and should be affirmed by this court.

C O N C L U S I O N

It is respectfully submitted that finding by the trial court that defendant executed the agreement as an individual is properly sustained by the evidence. That the finding by the court that the reasonable value of the stock was three cents per share is also sustained by the evidence. The trial court, having properly ruled con-

cerning these matters, the judgment entered by the court should be affirmed.

Respectfully submitted,

RAWLINGS, WALLACE,
ROBERTS and BLACK
By RICHARD C. DIBBLEE